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SERVICE DATE – AUGUST 23, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-68 (Sub-No. 4X)

LAKE SUPERIOR & ISHPEMING RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN MARQUETTE COUNTY, MI

Decided: August 22, 2005

By decision and notice of interim trail use or abandonment (NITU) served on January 19, 2005, the Board granted to Lake Superior & Ishpeming Railroad Company (LS&I) an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a segment of a line of railroad known as the Republic Subdivision, extending from Humboldt Jct. (milepost 85.6) south approximately 8.9 miles to the end of the line at Republic Mine (milepost 94.5), in Marquette County, MI, subject to environmental and standard employee protective conditions. Also, in response to a request by the Michigan Department of Natural Resources (MI-DNR), the Board imposed a public use condition, and issued a NITU for a 180-day negotiating period, extending until July 18, 2005.¹

On August 11, 2005, MI-DNR filed a request for an extension of the NITU negotiating period, until November 15, 2005. MI-DNR states that the parties are continuing negotiations toward an agreement and that it expects to complete an agreement by November 15, 2005. By letter filed on August 18, 2005, LS&I states that it has no objection to the extension request and that it will continue to negotiate with MI-DNR in an effort to complete an agreement.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended to November 15, 2005.

¹ The public use condition expired on that date.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the interim trail use negotiating period is granted.
2. The negotiating period under the NITU is extended to November 15, 2005.
3. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary